

Remarks

In the Office Action, the Office requires election of one of three inventions as defined by claims 1-8 ("Invention I"), 9-15 ("Invention II"), and 16-20 ("Invention III"). By this response, Applicants hereby elect claims 9-15, Invention II, with traverse. Reconsideration of the election/restriction requirement and rejoinder of claims 1-8 and 16-20 are respectfully requested in view of the following remarks.

With respect to Inventions I and II, the Office alleges that these inventions are related as combination and subcombination. However, the Examiner relies on the viscosity adjustment feature of claim 9 as both: (1) the particulars of the subcombination not required by the combination, and (2) to show separate utility. Applicants submit that this is an improper application of the rule set forth by MPEP 806.05(c). While it is the case that claim 9 includes a viscosity adjustment feature, both claims 1 and 9 relate to fluid replenishment systems. Because the utility of claim 9 is clearly directed to fluid replenishment, as is claim 1, Applicants submit that the second part of the test laid out by MPEP 806.05(c), *namely that the subcombination must have utility by itself or in other combinations*, has not been met, and therefore the restriction is improper.

Moreover, it is respectfully submitted that the subject matter of all claims 1-20 is sufficiently related that a thorough search for the subject matter of any one of the claims would encompass a search for the subject matter of the remaining claims. Thus, it is respectfully submitted that the search and examination of the entire application could be made without serious burden. See MPEP §803, in which it is stated that "[i]f the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions" (emphasis added).


It is respectfully submitted that this policy should apply to the present application in order to avoid unnecessary delay and expense to Applicants and duplicative examination by the Patent Office.

In light of the above, Applicants respectfully submit that all claims are in condition for prompt consideration on the merits, and respectfully request this consideration. However, in the alternative, Applicants have herein elected claims 9-15, Invention II, with traverse, for consideration. Should the Examiner require anything further, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,

Dated:

2/1/04


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